

REMARKS:

The Office action mailed December 1, 2005 has been received and carefully considered. Reconsideration of the application in view of the present amendment is respectfully requested.

The pending claims were rejected on the basis of being obvious in view of Jackson Publication US2002/0068973. It is noted that the structure, but not the materials of construction of at least certain of the claims of the present application is shown in the cited publication.

A supplemental declaration was filed in this application which due to a typographical error claimed priority from itself instead of application Serial No. 09/644,722, which was filed on August 23, 2000, was copending with Serial No. 09/729,600 (which resulted in the cited publication), and which was still pending when the present application was filed on August 27, 2003 (it issued as patent on December 23, 2003).

Consequently, a proposed Supplemental Declaration is submitted herewith to correct the typographical error. A signed Declaration will be separately submitted.

It is noted that the '722 application discloses and teaches an interbody device with an axis and upper and lower elongate convex surfaces that are generally coaxially located with respect to the axis and which are cylindrical in shape along a substantial length of the device. The '722 application also

shows concave side surfaces along a substantial length thereof and is thus believed to provide a bridge for this subject matter from the original 09/729,600 application to the present application, such that the cited publication does not represent prior art with respect to this application.

Consequently, it is urged that Claims 1 to 56 distinguish over the cited prior art for the reason discussed above. Furthermore, Claims 1 to 56 call for various materials of construction which help distinguish them over the cited art.

In view of the above, it is urged that the pending claims are allowable and notice to this effect is respectfully requested.

The Examiner is invited to contact the undersigned by telephone, if prosecution of this application can be expedited thereby.

Respectfully Submitted,



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May 1, 2006.

Roger P. Jackson  
(Applicant)

By



May 1, 2006

(Date of Signature)